

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

In re:

BOROWIAK IGA FOODLINER, INC,

Debtor.

Chapter 11

Case No. 19-40699-lkg

Honorable Laura K. Grandy

**APPLICATION OF GORDON FOOD SERVICE, INC. FOR ALLOWANCE AND
PAYMENT OF ADMINISTRATIVE PRIORITY CLAIM**

Gordon Food Service, Inc. (“GFS”), by its undersigned counsel, hereby submits the following Application for Allowance and Payment of Administrative Priority Claim pursuant to 11 U.S.C. § 503(b)(9) (the “Application”). In support of it Application, GFS respectfully states as follows:

1. On September 17, 2019 (the “Petition Date”), Debtor Borowiak IGA Foodliner, Inc (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 §§ 101, *et seq.* (the “Bankruptcy Code”). The Debtor is currently operating as a debtor-in-possession.

2. Before the Petition Date, GFS provided and shipped to the Debtor certain products on three separate accounts pursuant to an agreement executed by Debtor on June 17, 2002 (the “Agreement”), a copy of which is attached hereto as **Exhibit A**.

3. As of the petition date, the Debtor owed GFS \$3,496.14 for the account ending in 0329, \$2,603.82 for the account ending in 0330, and \$2,578.32 for the account ending in 0334, for a total of \$8,678.28. A summary of the invoices for the goods received by Debtor on each account is attached hereto as **Exhibit B**. The invoices are attached hereto as **Exhibit C**.

4. The Debtor received all \$8,678.28 worth of goods within the 20 day period before the petition date (the “20-Day Goods”). Accordingly, GFS is entitled to an administrative priority claim of \$8,678.28 pursuant to 11 U.S.C. § 503(b)(9).

5. With this Application, GFS seeks an order from the Court allowing GFS an administrative claim against the Debtor for the value of the 20-Day Goods delivered to it in the amount of \$8,678.28 (the “503(b)(9) Claim”).

6. Section 503(b)(9) of the Bankruptcy Code states “after notice and a hearing, there shall be allowed administrative expenses” for “the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.” 11 U.S.C. § 503(b)(9).

7. GFS sold the 20-Day Goods to the Debtor, and the Debtor received the 20-Day Goods, within 20 days of the Petition Date. The 20-Day Goods were sold to the Debtor in the ordinary course of the Debtor’s business. GFS has not received payment for the 20-Day Goods. Accordingly, pursuant to section 503(b)(9), GFS is entitled to an administrative claim for the value of the 20-Day Goods provided to the Debtor.

8. As an administrative claim, the 503(b)(9) Claim is entitled to priority in any distribution from assets of the Debtor’s estates. 11 U.S.C. § 507(a)(2). This priority is secondary only to domestic support claims. 11 U.S.C. § 507(a)(1). The 503(b)(9) Claim must be paid in full in cash in order for the Court to confirm any plan of reorganization. 11 U.S.C. § 1129(a)(9)(A).

9. This Application is made without prejudice to, and GFS reserves, all other rights, claims, demands, and remedies available to GFS, at law or in equity, including but not limited to,

GFS retaining title to some or all of the goods. In addition, GFS reserves the right to seek payment of further amounts under section 503(b)(9) if it later discovers information that additional goods were received by the Debtor within 20 days of the Petition Date.

WHEREFORE, having satisfied the requirements of section 503(b)(9), GFS requests that this Court enter an order: (1) allowing the 503(b)(9) Claim; (2) directing that distributions on the 503(b)(9) Claim be made at the earliest date and at the same percentage as any other allowed administrative claims of equal priority against the Debtor's estate; and (3) for such other and further relief as this Court deems just and proper.

Dated: December 23, 2019

Respectfully submitted,

/s/ Jason M. Torf

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